

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
COURTNEY ROSS HOLST F/K/A	:	DETERMINATION
COURTNEY SALE ROSS	:	DTA NO. 818274
	:	
for Redetermination of a Deficiency or for Refund of New	:	
York City Personal Income Tax under the Administrative	:	
Code of the City of New York for the Years 1993 and 1994.	:	

Petitioner, Courtney Ross Holst, formerly known as Courtney Sale Ross, 26 West End Road, East Hampton, New York 11937, filed a petition for redetermination of a deficiency or for refund of New York City personal income tax under the Administrative Code of the City of New York for the years 1993 and 1994.

A hearing was held before Gary R. Palmer, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York on December 20, 2001 at 10:30 A.M., with all briefs to be submitted by June 24, 2002, which date commenced the six-month period for the issuance of this determination.

Petitioner appeared by Paul, Weiss, Rifkind, Wharton & Garrison, Esqs., (Jeffrey B. Samuels, Esq., and Matias C. Milet, Esq., of counsel). The Division of Taxation appeared by Barbara G. Billet, Esq., (Peter B. Ostwald, Esq., of counsel).

ISSUES

I. Whether petitioner was a domiciliary of the City of New York during 1993 or 1994.

II. Whether petitioner was a statutory resident of the City of New York during 1993 or 1994.

FINDINGS OF FACT

1. Pursuant to an audit of petitioner's City of New York nonresident earnings tax returns for 1993 and 1994, the Division of Taxation ("Division") issued to petitioner a statement of personal income tax audit changes dated December 16, 1997 for each year at issue. For 1993, the Division asserted additional City of New York personal income tax in the sum of \$124,572.57 plus penalty and interest, and for 1994, the Division asserted additional City of New York personal income tax in the sum of \$396,029.01 plus penalty and interest. An explanatory memo from the Division was attached to each statement which reads as follows:

As you have not established by clear and convincing evidence that you did not change your domicile from 71 East 71st Street, New York City to West End Road, East Hampton, you are considered to be a New York City resident for income tax purposes. As a resident you are subject to tax on all income, regardless of the source.

Alternatively, if it is decided that you are not domiciled in New York City, you are being held as a statutory resident of New York City based upon the following: 1. You continue to maintain a permanent place of abode located at 71 East 71st Street, New York City. 2. You have not established through adequate records that you did not spend more than 183 days of the tax years 1993-1994 within New York City.

2. During the audit the Division requested the production of certain records, including telephone bills, homeowner's insurance policies, bank statements, credit card statements, limousine statements and helicopter logs. Petitioner's present representatives were retained on or about October 7, 2001, or some two and one-half months before the hearing. The prior representatives produced very few records pursuant to the Division's request. At the hearing petitioner's representatives placed in evidence a substantial quantity of documents that included

airline statements and aircraft charter statements; chiropractor, cosmetology and massage therapy statements. Also produced were credit card statements and receipts, limousine statements, and petitioner's computerized diaries covering most, but not all of the 24 months of the audit period. At the hearing the record was kept open for the receipt of additional documents from petitioner. Additional records were timely received which included two loose leaf ring binders (one marked "Tabs A to E" and one marked "Tabs F to H") as well as two Ross School publications and an issue of I.D. magazine. Taken as a whole, the records produced are sufficient to show where petitioner was, on a day-to-day basis, throughout the audit period.

3. On June 8, 1998, the Division issued a Notice of Deficiency to petitioner imposing New York City personal income tax plus penalty and interest, as follows:

Tax Year	Tax Amount	Interest	Penalty	Total
1993	\$124,572.57	\$47,496.29	\$44,555.45	\$216,624.31
1994	\$396,967.01	\$112,134.75	\$121,392.31	\$630,494.07
Totals	\$521,539.58	\$159,631.04	\$165,947.76	\$847,118.38

4. Petitioner requested a conciliation conference with the Division's Bureau of Conciliation and Mediation Services, and a conciliation conference was held on April 29, 1999. On July 14, 2000 a conciliation order was issued sustaining the notice of deficiency.

5. Petitioner is the widow of Steven J. Ross, who, until his death on December 20, 1992, was the CEO of Time Warner, Inc. For 1992 and for a period of years prior to 1992 that is not reflected in the record, petitioner and her late husband filed their New York State and New York City personal income tax returns as residents of New York City.

6. During the years at issue petitioner owned and maintained a residence at 71 East 71st Street, Apartment 12D, New York City, and another residence at Cody House, 26 West End Road, East Hampton, New York. Other than the hearing testimony of her attorney, Mr. Samuels, petitioner presented no witnesses in support of her petition, relying instead on her own affidavit and the affidavits of her butler/executive assistant, an attorney and founding trustee of the Ross School, her chiropractor and a Florida yacht broker with whom she did business.

7. There is little detail in the record respecting the physical attributes of petitioner's two residences. The record includes a copy of the Federal estate tax return of Steven J. Ross, which includes an inventory of the estate assets. The inventory of assets states the appraised value of a cooperative apartment located at 71 East 71st Street, New York City, designated as "old" to be \$8,770,000.00; and a second cooperative apartment at the same address, listed as jointly owned and designated as "new" with an appraised value of \$7,600,000.00. The record does not indicate which apartment is petitioner's apartment 12D at 71 East 71st Street. The inventory of assets states the appraised value of real property in East Hampton, New York, designated as "main" to be \$3,700,000.00. This property was purchased by petitioner and her husband in 1980 for \$950,000.00.

8. Petitioner maintains some pieces of her valuable and cherished works of art at both the Cody House in East Hampton and her New York City apartment. Insurance documents included in the record establish that petitioner maintains fine arts coverage on paintings, antique furniture and antique carpets appraised at \$68,310,720.00. Schedule "D" to her 1993 Form 1040 indicates that on July 16, 1993 petitioner purchased assorted artwork valued at \$3,465,000.00 which she sold on October 6, 1993 at a loss.

9. Petitioner's nearest living relative during the years under examination was and remains her daughter, Nicole, born June 27, 1983. Nicole attended the Ross School from its founding in 1991 until she graduated in 2001. At its inception in the 1991-1992 school year, the Ross School was a "traveling school" with three students including Nicole. During that year, the students and two teachers would accompany petitioner and her husband on his business trips where the students were exposed to and learned of other cultures. I.D. Magazine (March/April 1999) described the Ross School as an "idea that grew out of an ambitious home-schooling experiment the Rosses conducted" When Mr. Ross became seriously ill in 1992 and his business travel ceased, the school, at some point, became based in a small studio in East Hampton. During the 1992-1993 school year, the student body had grown to six students who were served by three full-time teachers and five part-time specialists. On January 17, 1993, petitioner, the students and staff, at petitioner's expense, traveled to Paris, Berlin and London, returning on February 6, 1993. Petitioner then accompanied the Ross School students and staff on a trip to the Galapagos Islands, departing on April 20, 1993, and returning on May 1, 1993. Petitioner chartered a yacht in Ecuador for this trip.

10. On July 23, 1993, the Board of Regents of the New York State Education Department granted to petitioner and others as first trustees, a provisional charter incorporating the Ross School as an education corporation located in East Hampton, New York. The charter was for a period of three years and stated the corporate purpose to be the operation and maintenance of a kindergarten and grade one through eight elementary school. By the 2001-2002 school year, the Ross School had grown to where it had 252 students in grades 5 through 12 at its campus in East Hampton. All students lived at home and commuted daily to the campus. During 1993 and 1994 petitioner's daughter lived at the Cody House in East Hampton and attended the Ross School.

11. During 1993 and 1994, in addition to her parental responsibilities at the Ross School, petitioner was actively involved in hiring high-level staff, consulting with educational experts, and attending meetings with staff, parents and others regarding school business in East Hampton and New York City. During 1993 she had meetings or attended functions relating to Ross School business or activities, as reflected in petitioner's diaries, in East Hampton on 15 different days, and meetings in New York City relating to the Ross School on 4 different days. In addition, during 1993 petitioner spent 24 days traveling outside the United States with Ross School staff and students. During 1994, petitioner traveled with students and staff 23 days in relation to the "Colonial America" tour. During that year petitioner participated in meetings or attended functions related to Ross School business in East Hampton on 26 different days, and in New York City on 11 days.

12. During 1993 and 1994 petitioner attended one or more meetings in New York City with the co-executors of the estate of Steven J. Ross or with financial advisors, as reflected in her diaries, on 90 different days. Petitioner had been appointed as one of four co-executors of her husband's estate.

13. During 1993 petitioner spent some part of 134 days in New York City and 140 days in East Hampton. The New York City days were exclusive of days that she entered New York City for the sole purpose of boarding a plane for travel to a destination outside of New York City. Similarly, in 1994 petitioner spent some part of 164 days within New York City and 116 days within East Hampton.

14. Petitioner registered to vote in New York City in February of 1988, and voted there on November 7, 1989, November 3, 1992 and November 4, 1997. Petitioner registered to vote in East Hampton on April 29, 1993, and voted there on November 5, 1996.

15. In April of 1997, petitioner was issued a New York State driver's license bearing her West End Road, East Hampton, New York address.

16. In June 1993, petitioner was the owner of nine motor vehicles, one of which was garaged in New York City, and the remaining eight were garaged in East Hampton.

17. During 1993 and 1994 petitioner maintained a business office in New York City at 115 East 57th Street, Suite 1240, where her employees paid her bills, including her Long Island Lighting Company bills for service to 26 West End Road, East Hampton; 11 Maidstone Avenue, East Hampton; and 4 Goodfriend Drive, East Hampton; fuel oil deliveries to 11 Maidstone Avenue, East Hampton; and Suffolk County Water Authority bills for service to Main House, West End Road, East Hampton and Maidstone Avenue, East Hampton. No utility bills were presented for petitioner's New York City apartment.

18. Petitioner maintained a charge account at an East Hampton service station during the years at issue in the name of Steven Ross for auto repairs and gasoline purchases. The customer address was P.O. Box 1753, West End Road, East Hampton, New York. By May 1994, the customer name and address had been changed to Courtney Ross, 115 East 57th Street, New York, New York.

19. Petitioner maintained a checking account for the use of her business office employees at Republic National Bank of New York, 1002 Madison Avenue, New York, New York. She also maintained accounts at Offitbank in New York City, and at Chemical Bank, The Berkshire Bank, Citibank and Chase Manhattan Bank, although the office locations are not reflected in the record. Petitioner also had an account at an office of the Republic National Bank of New York located in Italy.

20. In July of 1993, renter's insurance statements were issued in the name of Steven J. Ross for the contents of warehouse/storage space at Judson Warehouse, 49-20 5th Street, Long Island City, New York; Cirkers Hayes at 305 East 61st Street, New York City; and Crozier Fine Arts at 525 West 20th Street, New York City.

21. In August 1993, two riders to a fine arts insurance policy were issued increasing coverage from \$56,558,819.00 to \$68,410,720.00. The named insureds were Steven J. Ross 1992 Family Trust, Estate of Steven J. Ross, and Courtney S. Ross. Attached to the riders were eight pages listing numerous pieces of valuable antique furniture, paintings and carpets to be added to the items insured.

22. During 1994 petitioner received \$15,806.00 in wages from Time Warner, Inc. She had no wage income from any source in 1993.

23. Petitioner treated with New York City physicians and a New York City dentist throughout 1993 and 1994. Her daughter's dentist had offices in New York City as well. Petitioner's chiropractor was based in Montauk, New York. He made frequent visits to petitioner's East Hampton residence to administer treatments.

24. Petitioner's 71 East 71st Street, New York City mailing address was used during 1993 and 1994 on hotel bills, including The Dorchester (London), The Peninsula (Beverly Hills), The Sherman House (San Francisco) and The Four Seasons (Beverly Hills). The Four Seasons hotels in Philadelphia and Washington, D.C. billed the Ross School address in East Hampton in May 1994 for the lodging of petitioner, the staff and students of the Ross School during the "Colonial America" tour. The Peninsula Hotel was using the 115 East 57th Street, New York City address by July 1994. The Four Seasons Olympic Hotel in Seattle used the P.O. Box 1753, East Hampton, New York address in September 1994. The A La Carte Limousine and Sedan Service

in San Francisco and the Superior Limousine Service in North Hollywood, California, used petitioner's 71 East 71st Street, New York City address. Music Express Limousine Service, petitioner's most frequently used service, used the 71 East 71st Street, New York City address on some invoices, and the 115 East 57th Street business office address on other invoices. Clause Limousine, Ltd., of East Hampton, New York, used petitioner's East Hampton address on its invoices. VTS Travel Enterprises used the Ross School address in East Hampton, New York for school related travel bookings, but otherwise used petitioner's 71 East 71st Street, New York City address, except for one occasion when it used the West End Road, East Hampton, New York address. Thomas Cook, a travel agency, used petitioner's West End Avenue, East Hampton address. Aviation Methods, Inc. and Dassault Falcon Service (France), charter aircraft transportation providers, addressed their statements to petitioner's 71 East 71st Street, New York City address. Executive Fliteways, Inc., a Long Island based charter company, used the 115 East 57th Street business office address.

A Methodist Hospital (Houston) statement dated in May 1993; a San Diego attending physician's statement dated in May 1994; a Cornell University Medical College statement dated in July 1994; medical insurance forms submitted by several California physicians in October 1994; and various statements from Baylor College of Medicine physicians in May 1993, used petitioner's 71 East 71st Street, New York City address. A May 1994 New York Hospital outpatient statement used the 115 East 57th Street business office address and a June 1994 South Hampton Hospital statement used petitioner's P.O. Box 1753, East Hampton, New York address. Correspondence from Richard A. Eisner & Company, a financial planning services provider, used the 71 East 71st Street, New York City address in August 1994. Harrods, a department store in London; Neiman Marcus stores in Beverly Hills and San Diego, and Joan & David clothing

stores in Los Angeles and Costa Mesa, California, used the 71 East 71st Street, New York City address for petitioner's accounts.

25. The record identifies a circle of petitioner's friends who either visited with her at 71 East 71st Street, or lunched with her, had dinner with her or attended the theater with her in New York City on one or more occasions. Some of these same friends also visited or attended functions at petitioner's West End Road, East Hampton residence or at the Ross School during the years in issue.

26. The record includes 27 invoices from a Brooklyn based aquarium service company for tank maintenance and related services rendered between December 1993 and November 1994. Approximately one-half of these invoices bear petitioner's East Hampton address. The remaining invoices have no address. Petitioner also did frequent business during 1994 with a horseshoeing service based in Brookhaven, New York.

27. During 1993 petitioner met with art curators of the Ross Art Collection or art dealers in New York City on 10 different dates, and in East Hampton on 6 additional dates. In 1994 petitioner met with the art curators or art dealers in New York City on six different dates. There were no such meetings in East Hampton in 1994.

28. The record included an analysis of household expenditures during the first six months of 1993 only. This analysis stated the total food expenditures at "71st Street" to be \$48,351.00, compared with East Hampton where the total for the same period was \$19,636.00.

29. Of petitioner's 24 overnight trips to locations outside of New York State during 1993 and 1994, she returned directly to her New York City residence on 15 occasions, and to her East Hampton residence on the remaining 9 occasions.

SUMMARY OF THE PARTIES' POSITIONS

30. Petitioner maintains that although New York City might have been the greater focal point of her activities before 1993, upon the death of her husband in December 1992, her work and family ties became focused in East Hampton in that the traveling school that was to become the Ross School was by then housed in a small studio in East Hampton where petitioner's daughter resided and attended the school. Petitioner, as the school's sole surviving founder, was actively involved in hiring high level staff, consulting with educational experts and attending meetings with staff and parents. Because these activities took place in East Hampton, they formed a basis to conclude that petitioner was involved in East Hampton community life, and because petitioner's business ties and family ties were also based in East Hampton, it follows that petitioner was domiciled in East Hampton during 1993 and 1994.

Petitioner also opposes the Division's claim that she has failed to meet her burden to prove that she did not spend more than 183 days of each year at issue within New York City as a separate basis for her being taxed as a New York City resident. It is petitioner's position that she has proven that she spent no more than 132 days and 150 days within New York City during the years 1993 and 1994, respectively.

31. The Division contends that petitioner has failed to meet her burden of proof to establish that she intended to change her domicile to East Hampton for the years at issue, in that her active business involvement relating to meetings with legal and financial advisors, as well as her Ross School activities were predominantly based in New York City, and that she spent more days in New York City than she did in East Hampton. The Division further contends that the auditor determined that during 1993 and 1994 petitioner spent a total of 418 days within New York City and only 129 days in East Hampton, and because she spent more than 183 days of

each year within New York City, she is a statutory resident of New York City, and subject to being taxed as a resident thereof whether or not she is domiciled in New York City.

CONCLUSIONS OF LAW

A. Section 11-1705(b)(1)(A) of the Administrative Code of the City of New York defines a City resident individual as an individual

(A) who is domiciled in this city unless (i) he maintains no permanent place of abode in this city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this city . . . or

(B) who is not domiciled in this city but maintains a permanent place of abode in this city and spends in the aggregate more than one hundred eighty-three days of the taxable year in this city

B. Although the City's Administrative Code does not contain a definition of the term "domicile," a definition of the term is provided in 20 NYCRR 105.20 (d)(1), (2) and (4)¹ as follows:

Domicile. (1) Domicile, in general, is the place which an individual intends to be such individual's permanent home - the place to which such individual intends to return whenever such individual may be absent.

(2) A domicile once established continues until the person in question moves to a new location with the bona fide intention of making such individual's fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of such individual's former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual's intention in this regard, such individual's declarations will be given due weight, but they will not be conclusive if they are contradicted by such

¹New York City Personal Income Tax Regulations § 295.3 (a) incorporates the definitions of 20 NYCRR 105.20 for use in determining whether an individual is a resident of the City of New York.

individual's conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if the facts indicated that such individual did this merely to escape taxation.

* * *

(4) A person can have only one domicile. If such person has two or more homes, such person's domicile is the one which such person regards and uses as such person's permanent home. In determining such person's intentions in this matter, the length of time customarily spent at each location is important but not necessarily conclusive.

The Court of Appeals addressed the element of intent many years ago in *Matter of Newcomb* (192 NY 238, 251) with this language:

Motives are immaterial, except as they indicate intention. A change of domicile may be made through caprice, whim or fancy, for business, health or pleasure, to secure a change of climate, or change of laws, or for any reason whatever, provided there is an absolute and fixed intention to abandon one and acquire another and the acts of the person affected confirm the intention (citation omitted). No pretense or deception can be practiced, for the intention must be honest, the action genuine and the evidence both clear and convincing.

C. The Division's Audit Guidelines from its District Office Audit Manual, Nonresident Audits, July 18, 1997, identifies five primary factors that its auditors are to examine at the onset of the audit, and when it has been determined that the weight of the primary factors, when considered individually and then collectively in relation to the taxpayer's respective ties to the two jurisdictions, are found to be at least approximately equal, only then may the auditor proceed to a more comprehensive consideration of "other" factors in evaluating a claimed change of domicile. The five primary factors are (i) the home factor, (ii) active business involvement, (iii) time, (iv) items "near and dear," and (v) family connections. A consideration of these five primary factors, as applied to petitioner, follows.

D. *Home factor.* That petitioner maintains a residence in New York City is not sufficient, in itself, to support a finding of New York City domicile. However, her retention of the

cooperative apartment coupled with her frequent use of that apartment constitutes a significant factor that is inconsistent with petitioner's claimed change of domicile to East Hampton (*see, Matter of Wechsler*, Tax Appeals Tribunal, May 16, 1991; *Matter of Getz*, Tax Appeals Tribunal, June 10, 1993). The Guidelines require a direct comparison of the characteristics of the two residences. Among the characteristics to be compared according to the Guidelines are the size and value of the respective residences and the nature of the use of each residence by the taxpayer. The facts found in Finding of Fact "7" regarding the value of the East Hampton property and that of either or both of the two 71 East 71st Street cooperative apartments clearly favor a New York City domicile, notwithstanding any difference in real estate values between the two jurisdictions.

E. *Active business involvement.* The active business involvement primary factor of the Audit Guidelines includes active participation in a trade, business, occupation or profession, as well as a substantial investment in and management of a closely held business. Petitioner is not a wage earner or business person in any conventional sense. Her income reported in 1993 and 1994 was largely from investments and trusts. The only active business involvement professed by petitioner during 1993 and 1994 was in relation to her role as the founder and president of the board of trustees of the East Hampton-based Ross School, where her duties included hiring high level staff, consulting educational experts and attending meetings. Petitioner's contention that she was intensely involved in the day-to-day affairs of the school (petitioner's brief, p.5) is not supported by the record. Her diaries indicate her attendance, exclusive of school trips outside of New York State, at school functions and meetings with staff, parents, consultants and an educational expert on 19 occasions in 1993 and 37 occasions in 1994. Of these 56 meetings and functions over the course of two years, 42 occurred in East Hampton and 14 took place in New

York City. It follows that petitioner's involvement in the Ross School was not on a day-to-day basis, but it was predominantly in East Hampton.

F. As noted in Findings of Fact "8" and "21", petitioner maintains valuable works of art in both her East Hampton and her New York City residences and in August 1993 her fine arts insurance coverage was increased from \$56,558,819.00 to \$68,410,720.00. In addition, according to schedule "D" to her 1993 Form 1040, petitioner purchased \$3,465,000.00 in assorted artwork in July 1993 which she then sold in October 1993 for a loss. Further, as noted in Finding of Fact "20", in July 1993 insurance was maintained on the contents of warehouse and storage space located within New York City in the name of Steven J. Ross. Notwithstanding petitioner's reported short-term capital loss for artwork bought and sold in 1993, there is nothing else on which to base an inference that her extensive art collection was inventory held for sale in the ordinary course of business rather than for investment purposes (*see, Williford v. Commissioner*, 64 TCM 425). Because there is no other evidence that petitioner was conducting business in New York City, her active business involvement factor favors East Hampton.

G. *Time*. As indicated in Finding of Fact "13", in 1993 petitioner spent 140 days in East Hampton and 134 days in New York City, while in 1994 she spent 116 days in East Hampton and 164 days in New York City. The totals for both years are 256 days in East Hampton and 298 days in New York City. This day count varies from petitioner's day count analysis in her exhibit 6 mainly because she failed to count as East Hampton days a number of days when she traveled between East Hampton and New York City and spent part of the day at each location. When making a direct comparison between days spent at two locations, as here, each travel day should be counted as both a New York City day and an East Hampton day. In any event, the time factor favors New York City. In *Buzzard vs. Tax Appeals Tribunal* (205 AD2d 852, 613 NYS2d 294),

the court held that the fact that petitioners spent more time in New York than in Florida was a significant factor in determining their place of domicile.

H. *Near and dear items.* In her affidavit, petitioner advises that she maintains cherished and valuable art works at both the Cody House and her New York City apartment, and that the “New York City Art Collection” was not relocated to East Hampton following her husband’s death. Petitioner explained that the various pieces of art are maintained at their present locations for reasons of security, avoidance of ocean air and decor considerations, and that she has heeded the advice of curators, art conservation experts and investment advisors as much as acting on personal sentiment in determining where to keep her collection. The location of near and dear items does not favor either residence.

I. *Family connections.* Petitioner, in her affidavit, explained that her daughter, Nicole, is her closest relative and the object of her ties of affection. Petitioner stated that during 1993, 1994, and until Nicole’s graduation in 2001, her daughter lived at Cody House in East Hampton and attended the Ross School, which is not a boarding school. As to other relatives, petitioner’s mother lives in Texas, and her two sisters reside outside New York State in locations not revealed in the record. The record does indicate that it was not unknown for petitioner to be in New York City overnight when her daughter was in East Hampton. Just how prevalent this practice was is difficult to judge because the documents that clearly show petitioner’s presence on a day-to-day basis were not intended to track her daughter, and, of course, there was no testimony presented. The record does reveal that petitioner hired a nanny to be with Nicole when petitioner could not. The family connections factor favors East Hampton.

J. In that the analysis of the primary factors results in an even split between New York City and East Hampton, a consideration of “other factors” follows. In *Matter of Bourne* (181

Misc 238, 246, *affd* 267 App Div 876, *lv denied* 267 AD 961), the court stated, “[t]he acquisition of a new domicile involves an intent to abandon the old dwelling place as a home . . .” and “[the law] does demand that intent be manifested by unequivocal acts.” In *Matter of Murray* (Tax Appeals Tribunal, December 14, 1995), the Tribunal, citing to *Matter of Newcomb (supra)*, stated, “[s]evering old ties is as equally important as the formulation of ties to a new location.” In the matter here under consideration, beyond the tragic death of petitioner’s husband, it is difficult to identify any old ties with New York City that were severed. The record does not support a finding that any household furnishings were relocated to East Hampton from New York City (*see, Kornblum v Tax Appeals Tribunal*, 194 AD2d 882, 599 NYS2d 158). Not surprisingly New York City was where petitioner’s financial operations were concentrated during 1993 and 1994, which factor was held to bear on domicile in *Matter of Gadway* (123 AD2d 83, 510 NYS2d 737). Although simply leaving funds on deposit in a New York bank is not necessarily an appropriate basis for a determination of domicile, the reference here is to petitioner’s attendance in New York City at meetings in 1993 and 1994 with financial advisors or the co-executors of her husband’s will on 90 different days. It is likely the case that once the will was admitted to probate, the recommended investment strategies were in place and the revenue stream on which petitioner was to depend for the rest of her life was assured, then she no longer had to attend meetings of this kind and was free to focus more of her energies on East Hampton and the Ross School. At least for 1993 and 1994 her financial operations were concentrated in New York City, which supports the conclusion that petitioner’s place of domicile had not changed to East Hampton before or during the years under consideration.

K. When petitioner traveled during 1993 and 1994 to destinations outside of New York State, 71 East 71st Street, New York City was the mailing address that appeared most often on

her hotel bills, limousine service bills, charter aircraft service statements, medical service provider statements and retail store charge account statements, as detailed in Finding of Fact “24”. The continued receipt of mail at petitioner’s New York City residence address is inconsistent with her claim that she was then domiciled in East Hampton (*see, Matter of Rauscher*, Tax Appeals Tribunal, May 12, 1994).

L. Finding of Fact “29” relates to an analysis of the 24 occasions during 1993 and 1994 when petitioner made overnight trips to destinations outside of New York State and the finding that upon her return to New York State, she went first to her New York City apartment on 15 occasions and first to her East Hampton residence on the remaining 9 occasions. 20 NYCRR 105.20 (d)(1) defines the term domicile, in part, as the place to which a person intends to return to whenever he or she may be absent. Petitioner’s actions upon her return to New York State following the greater share of the 24 absences are inconsistent with her claim to be a domiciliary of East Hampton as that term is defined in the regulation (*see, Laufer v Hauge*, 140 AD2d 671, 528 NYS2d 878, *lv dismissed* 72 NY2d 1041).

M. As noted in Finding of Fact “14”, petitioner changed her voter registration from New York City to East Hampton on April 29, 1993. Having changed her registration to East Hampton in 1993, and not having indicated that she later changed her domicile back to New York City, it is inconsistent with her present position relating to her place of domicile in 1993 and 1994 that she voted in New York City in November 1997.

N. The record demonstrates that during 1993 and 1994, some of petitioner’s actions were consistent with her having changed her place of domicile to East Hampton, specifically relocating the Ross School to East Hampton, registering to vote in East Hampton and spending a significant amount of time there. Other actions, as noted above, are inconsistent with a change

of domicile. The fact that all but one of her automobiles is garaged in East Hampton does not appear to be a new practice adopted after January 1, 1993. To the extent that it could be concluded that the question presented regarding petitioner's place of domicile is a close question, such a conclusion is antagonistic to a claim that petitioner has established her East Hampton domicile by clear and convincing evidence (*see, Matter of Kartiganer v Koenig*, 194 AD2d 879, 599 NYS2d 312). It is found that petitioner continued to be a New York City domiciliary during 1993 and 1994.

O. In accordance with Finding of Fact "13" wherein it was determined that petitioner spent fewer than 184 days in New York City during 1993 and 1994, pursuant to section 11-1705(b)(1)(B) of the Administrative Code of the City of New York, petitioner is found not to be a statutory resident of New York City during 1993 or 1994.

P. The Notice of Deficiency imposed penalties for negligence pursuant to Tax Law § 685(b), and for substantial understatement of liability pursuant to Tax Law § 685(p). The burden of proof is on petitioner to establish that the tax deficiency resulting from her actions was not due to negligence, and that there is substantial authority for the treatment of her tax items which resulted in her substantial understatement of tax (Tax Law § 689[e], *Matter of Murray, supra*). Petitioner's burden has not been met and the penalties are sustained.

Q. The petition of Courtney Ross Holst f/k/a Courtney Sale Ross is denied and the Notice of Deficiency dated June 8, 1998 is sustained.

DATED: Troy, New York
December 19, 2002

/s/ Gary R. Palmer
ADMINISTRATIVE LAW JUDGE